MINUTES OF HARRISONBURG PLANNING COMMISSION
November 12, 2009

The Harrisonburg Planning Commission held its regular meeting on Thursday, November 12, 2009, at 7:00 p.m. in the City Council Chambers, 409 South Main Street.

Members present: Richard Baugh, Jared Burden, Charles Chenault, Muawia Da'Mes, Alan Finks and Bill Jones.

Members absent: J.M. Snell

Also present: Stacy Turner, Director of Planning and Community Development; Adam Fletcher, City Planner; Alison Banks, Planner and Secretary.

Chairman Burden called the meeting to order and determined a quorum with six of seven members in attendance. He then asked for review and approval of the minutes from the October 14, 2009 Planning Commission meeting.

Mr. Da'Mes said he would like to make one correction to the minutes. He was indeed at the meeting; the minutes reflect that he was absent.

Mr. Chenault moved to approve the minutes with the proposed correction from the October 14, 2009 meeting.

Mr. Da'Mes seconded the motion.

All voted in favor of approving the minutes. (6-0)

Chairman Burden then asked for review and approval of the minutes from the Comprehensive Plan Review meeting on October 14, 2009.

Mr. Baugh moved to approve the minutes from the October 14, 2009 Comprehensive Plan Review meeting.

Mr. Finks seconded the motion.

All voted in favor of approval. (6-0)

New Business

Preliminary Plat – Cypress Park LLC, Subdivision (2009)

Chairman Burden read the first item of business and asked for staff to review.

Mr. Fletcher said the Comprehensive Plan designates this area as General Industrial. This designation states that these areas are composed of land and structures used for light and general manufacturing, wholesaling, warehousing, high-technology, research and development, and related activities.

The following land uses are located on and adjacent to the property:

Site: Single family home and undeveloped land, zoned R-1

North: Land owned by Rockingham County, zoned R-1

East: County property, owned by Rockingham County and used for landfill operations

South: County property, zoned R-3C for single family homes

West: Industrial uses, zoned M-1

In September, Planning Commission reviewed a preliminary plat request from Cypress Park, LLC for their proposed subdivision off of Willow Spring Road, which included a request to deviate from the Subdivision Ordinance street standards that are regulated by the Design and Construction Standards Manual (DCSM) and also to permit a parcel to digress from lot dimension requirements. Staff recommended rejecting the application and then Planning Commission unanimously voted to recommend denial of the request (6-0). The case, however, was never heard by City Council because the applicant made changes to their design, and therefore the proposal must be reviewed again by Planning Commission. The property owner is once more requesting to preliminarily subdivide the acreage, but their application is different from the September review. The applicant no longer needs a variance for lot dimension requirements, and further, they now believe a variance from Section 10-2-41 (a) of the Subdivision Ordinance—relating to the maximum cul-de-sac length and traffic generation regulation—is not needed.

As Planning Commission is well aware, the property owner has filed to preliminarily plat this acreage several times. The current application is to preliminarily subdivide 32.9 +/- acres into 78 single family home lots and two common area parcels on property zoned R-1, Single Family Residential District. There are eight different streets within the City portion of this development; however, the property would only have one public street entering into the neighborhood and no secondary public street access, therefore the whole development is considered a large cul-de-sac. Although the general layout and design of the community has not changed, the applicant is now claiming the Subdivision Ordinance variance is not necessary and is ***not*** requesting to deviate from the City's maximum cul-de-sac length of 800 feet and the maximum vehicle trips per day regulation of 250, which is found within Section 3.1.10.2 of the DCSM. For this reason, and further because we do not believe it is wise to grant the variance, staff maintains a recommendation to reject the application.

The property is zoned R-1, which permits single family detached development, but as described above, the design of the proposed subdivision is a long cul-de-sac. Although the property owner is not requesting the Subdivision Ordinance variance, this requirement must be waived in order for them to build the subdivision. Included within the packet of information is a memo from the City Attorney regarding this matter. The memo concisely states his position that the subdivision layout would require a variance to exceed the City's cul-de-sac length requirement and to exceed the vehicle trips per day standard. The City's position on this issue has been consistent since the first submission back in 2004, which has been that this design is in fact a long cul-de-sac.

The major differences in the design from the September review include: shortening the length of the first cul-de-sac (Willow Spring Road), relocating the common space to the end of the first cul-de-sac (adjacent to the landfill), adding an additional cul-de-sac to the area where the common area was previously located, removing the proposed bus shelter, and finally removing the portion of Robinia Street that connected Willow Spring Road and Myrica Cove. (The applicant should be aware that Castenea Cove, the opposing cul-de-sac street from Aralia Boulevard, might have to change its name to Aralia Boulevard, for safety and continuity.)

The single family home lots continue to either meet or exceed the lot size requirements and there remains the plan for two common parcels. The protective covenants and conditions that staff has

reviewed specify the homeowner's association shall be responsible for all maintenance, repair, and replacement of the common areas and the emergency access road. The City would be responsible for maintenance of the dedicated public streets, including trash pick-up and snow removal.

The 50-foot buffer easement along the property boundaries adjacent to the landfill is still planned, as well as the landscaping along the border of the stormwater detention parcel adjacent to the Banta Property. The stormwater management parcel would include two rows of Leyland Cypress and Norway Spruce trees. Staff continues to recommend a buffer be established along the northern property boundaries that abut the County property. The majority of the County property will probably be sparsely wooded or remain an open field, therefore, buffering the homes from the proposed uses of the property would be in the best interest of the potential residents.

Although the preliminary plat within the County has expired, the applicants continue to plan for a future section in Rockingham County, which would add an additional 46 lots, accessed from two planned City streets ending at the jurisdictional line. The County phase then illustrates a potential road extension in the direction of Pleasant Valley Road; however, there is no guarantee that extension would ever occur as the adjacent property is zoned agriculturally. Furthermore, if that adjacent property ever develops, the City will not have the authority to require a street connection to the subdivision.

As a reminder, including both the City and County sections, the entire development would generate approximately 1,200 vehicle trips per day and roughly 125 vehicle trips during the maximum peak hour. The Traffic Impact Analysis (TIA), however, determined that no improvements to the surrounding streets were necessary. Since this development must cross a Norfolk Southern rail line, although not required, staff continues to recommend the applicant perform a diagnostic review to address safety concerns associated with the current "passive" railroad crossing.

An important component that remains part of this subdivision is the 12-foot wide emergency access "tar and chip" road. Keep in mind this road will be accessible only by emergency responders and will be controlled with a locked gate. This road will be built during the first phase of the development, connected to the subdivision from the fire access lane behind the Banta facility.

As mentioned in the past, the Public Utilities Department has reported concerns with water pressure variations in this area. If approved, they will be required to submit a preliminary engineering report for the site plan review.

By this time, Planning Commission should be well aware of the concerns staff has about the proposed subdivision without going into specific details to describe the elements of each concern. The major concerns are staff does not want to approve a variance that would increase the density for this property with only one public street entering the subdivision, which also requires crossing a rail line. Additionally, staff does not want to encourage increasing density of a permitted use that is not in conformance with the Comprehensive Plan.

Staff appreciates the applicant providing the emergency access into the subdivision. However, the access road only allows emergency responders to avoid hazards associated with the rail line. The more appropriate scenario would be to have another public street into the subdivision. We welcome the applicant's desire to build workforce, single family detached dwellings. Arguably though, that would be the only optimistic result from this subdivision as it complies with some Comprehensive Plan goals. At the same time however, it is not prudent to build more single family homes in an area with only one public street entrance.

There is little justification for the property owner to claim they no longer need the variance from the Subdivision Ordinance. The City has been consistent since the original submissions of this request in 2004 as we have stated the development is a long cul-de-sac. The property owner has then continuously requested the necessary variance in all of their previous submissions. It should be clear that this request is unlike other areas in the City where stubbed streets were acceptable within developments and not considered long cul-de-sacs. The applicant is proposing stubbed streets toward the jurisdictional boundary with the County, where the City has no authority. Furthermore, the stubbed road in the County portion of the development is extended in the direction of property zoned agriculturally, and therefore, there is no guarantee a street would connect from Pleasant Valley Road to the subdivision or to any other public road that would provide a secondary public street into the development.

Staff has been consistent since the previous submissions of this plan of development and believes rejecting this proposal is in the best interest of the City. The preliminary plat does not comply with the Subdivision Ordinance Section 10-2-41 (a) as the plat does not conform to Section 3.1.10.2 of the DCSM, which restricts residential cul-de-sacs to 800 feet in length and regulates vehicle trips per day to 250. Since the preliminary plat remains non-compliant, staff recommends denying approval of the preliminary plat.

Although the applicant is not applying to deviate from the long cul-de-sac standard, if Planning Commission and/or City Council wish to approve this preliminary plat, the variance must be granted. If this is to occur, staff suggests two conditions be placed upon the application; they include 1) the developer shall construct the emergency access road so it is functional during the first phase of the project, prior to anyone living in the neighborhood, and 2) the developer shall perform a diagnostic railroad review to determine if active controls are warranted for the railroad crossing, and if there are needed improvements, they shall financially responsible for those upgrades.

Chairman Burden asked if there were any questions for staff.

Mr. Da'Mes said there are three phases to this project, one of which is in the County. What if you reversed this and required that access is made through the County to Pleasant Valley Road initially. Would there be any variance issue then, because it would not be considered a cul-de-sac.

Mr. Fletcher said there would be no issue if there were a second public street coming into this subdivision.

Mr. Da'Mes said it would be allowed by right; the long cul-de-sac issue would disappear. Therefore, it comes down to whether or not the second entrance is ever going to exist.

Mr. Fletcher agreed.

Hearing no further questions, Chairman Burden asked the applicant or applicant's representative if they would like to speak.

Mr. Steve Weaver, attorney with Clark and Bradshaw, said he represents Cypress Park and its owner/developer, John Girdley, who is also here tonight. We have been through this a lot, but I would like to go back through it just a bit to give us some time frame and perspective, and try to answer some of the issues that have come up over the last few years. Some changes were made after the last Planning Commission meeting in September. After discussing it, we felt the green space was more appropriate against the County Landfill. This also allowed for a larger green area in a better location. The property that was sold to the County was reserved as green space; so, there

are 36 acres right next to the site that will not be developed and will provide a very nice open, green area that will be there forever. We were able to remove the street that had some elevation issues; there were questions at the last hearing as to whether that street could even be built within the ten percent grade. We felt it could work; but we later found out there were some issues.

Mr. Girdley bought this property in the fall of 2005, so this issue has been with us now for four years. He did not request it be rezoned, it was already zoned R-1 by the City. He bought it believing it could be developed. He did not do anything to this property that cut-off road frontage along this property. Mr. Girdley started a design layout for this property and shortly into that project was approached by the County to purchase some land. When that purchase process starts, it takes a period of time; there are discussions, and there are decisions that have to be made by and through the local government. Mr. Girdley completely held off on all development so that the purchase could be worked out. In March of 2006 he sold the 13 acres that the County wanted for only $20,000 an acre, he did not try to make a big profit out of it. He then went back to begin a different layout, to accommodate the fact that it was now a different piece of property. Again, he was approached by the County for an additional piece of property and again, the project went on hold. This time he sold a 23 acre parcel to the County for $30, 000 an acre; this was in May 2007. Then, this subdivision was approved by Planning Commission and City Council. Generally, it was the same layout that you see tonight. There were some of the same issues that there are now, but it was approved by both bodies. At that time there was a one year time limit in which plats had to be recorded. There were several reasons for a lengthy delay; one was a question concerning emergency access. I believe that the recording process is now two years; therefore it would have accommodated Mr. Girdley if the old rule would have been two years instead of only one.

From the very beginning we knew there was only one access into the property. The solution, when dealing with County staff and with the Planning Commission and the City Council several years ago, was how to make this one access safe. There needs to be some sort of extra access to get out in an emergency. How do you get emergency responders in on a single access and over the railroad track? We worked with the County when we sold the land to them in order to gain an emergency access. That access came over to the site from Greendale Road, above the railroad track and entered into the site at the first small cul-de-sac. City staff did not particularly like that emergency access; they felt it came in at the exact same intersection where Willow Spring Road comes in, so there could be a problem right at the intersection, blocking access. Therefore, we went back to the drawing board and got a letter of intent from Banta for access. After discussing with staff we went back to Banta and actually acquired the easement. Banta was then sold to R.R. Donnelly, which then created an additional delay. We have gone step by step with each County and City request for this project, even though we had delays each time. We felt that this emergency access outlet had solved our problem, so in good faith, we proceeded with the project. Except for the land sales and the emergency access, we would have been able to develop this land after City Council approval several years ago.

This cul-de-sac issue has been an issue for a long time. City staff and the City Attorney characterize this project as one large cul-de-sac. I believe, and I shared this with Planning Commission at our last meeting, that it does not meet the definition of a long cul-de-sac; therefore a characterization is not the same as a definition. In the City's design standards manual, Section 3.1.10, the provision for cul-de-sac is entitled "permanent termination." That is the heading of the cul-de-sac design within the manual. Section 3.1.10.2 is the actual design standard for a cul-de-sac, it refers to development within residential developments, "as limited to 250 vehicles per day, not to

exceed 800 feet in length as measured along the center line from its intersection with a center line of the through street, to the center of the turnaround." It is a very specific definition and it says that a cul-de-sac is really a street off from a through street. There is also a picture of what a cul-de-sac looks like. We have a difference of opinion; but I do not feel that should be the lynch pin in this project. We did not specifically request a variance for a cul-de-sac because we believe that this development meets all the requirements. This cul-de-sac issue is simply a disagreement that should not over shadow this approval. All gated communities, all over the State of Virginia would be considered long cul-de-sacs under the City's view; Massanutten development would be considered a cul-de-sac. We do agree with the same summary that staff has come up with and ask that if the Planning Commission were to approve this, we would be bound by the two requirements. We would be willing to put in the emergency access in the very first stage of development, according to the City plans and we would agree to the requirement that the railroad crossing be looked at and studied. We understand the need for both of these requirements.

In closing, the only comment that I would make is that the City staff report is very comprehensive and it is very clear in reading the report that, outside of the cul-de-sac issue, we meet all design standards – for streets, for slopes, for utilities, for traffic control, we meet all design standards. The only reason we removed the bus shelter is because staff, in their comments, asked us to remove it. We would be glad to put it back; we actually feel it should be there. He then asked if there were any questions.

Mr. Finks asked is there another reason why you are not building that road out to Pleasant Hill Road at this time.

Mr. Weaver said the only thing we can do is to provide a stub street right up against the property boundary. It used to be that developers would stop a street somewhat close to the boundary and then they would charge the next land owner/developer to connect his road into it. The City and the County basically stopped that practice and told developers that the roads must be stubbed to the property line or stopped in a permanent cul-de-sac. This is called connectivity. We have connectivity within our subdivision. All we can do is provide the connectivity to the next landowner; that next landowner will not be able to develop until he comes up with a plan to continue the street through. One of these days the road would end up coming out on Pleasant Valley Road. Sometimes these roads will stay dead ended for 20 – 30 years before they are connected. There are examples of this throughout the City because the City has never made a landowner develop the street or open a street.

Mr. Ed Blackwell of Blackwell Engineering said he is the engineer for this project. There are just a few points that I want to bring up. One is the fact that this body and City Council have approved this project previously, before some of the land was sold to the County. With this plan we have shortened Willow Springs Road to less than 800 feet; therefore, we feel as if there are no variances necessary on this plan at all. I completely disagree with staff that they feel this entire development is one large cul-de-sac. Since the cul-de-sac regulation has been in effect within the City numerous areas have been developed. I have several examples that I will pass around. Some of the examples are: Meadow Pointe, with more than 140 lots and no interconnectivity; Liberty Square, has 38 lots; South Woods, 25 lots; Park Crest, 61 lots; Beacon Hill Section III, 48 lots; Stone Spring Village Phase I, has 49 lots; Stone Spring Village Phase II 36 lots; and James Place a 16 lot subdivision off Wyndham Circle. All of these developments come in and out one street. If you allowed these just a few years ago and deny this one it has the appearance of selective enforcement. I have been designing subdivisions for two decades here in the City, and a layout like this has been approved for

jobs I have done in the past. We do not feel this is a cul-de-sac and I do not understand how this one is different from others within the City. This subdivision has interconnectivity with parcels in the County and we feel as if we meet the ordinance requirements because the County enforces interconnectivity as well. We have worked hard to be accommodating with both the City and the County as far as land needs in this area and now at the eleventh hour it is like the rug is being pulled out from beneath us.

Please review the new evidence and understand that this is not a cul-de-sac. With that we ask for your approval on this. I would be happy to answer any questions you may have regarding this request.

Chairman Burden asked if there were any questions for Mr. Blackwell. Hearing none, he asked if there was anyone wishing to speak in favor of the request. Hearing none, he asked if there was anyone wishing to speak in opposition to this request. Hearing none, he added that it is staff's belief that if Planning Commission were to approve this request it would still need a variance for a long cul-de-sac granted with the approval.

Mr. Fletcher agreed and said a motion to approve would need to include a variance to that section of the Design and Construction Standards Manual.

Chairman Burden asked Planning Commission for discussion or any questions they may have.

Mr. Finks said several of the subdivision brought up (from Mr. Blackwell) are self contained and do not have City streets within them. Does that make a difference?

Mr. Fletcher replied yes, that does make a difference, we do not have a long cul-de-sac standard on private streets. Several of the developments that were mentioned are private.

Mr. Finks asked if the applicant were to decide to develop this with private streets, then we would not be discussing the cul-de-sac variance.

Mr. Fletcher said yes, but, the applicant would then need a variance to allow lots to not front along a public street.

Mr. Chenault said some of the plats that Mr. Blackwell presented are all public streets. For example Wyndham Woods is public.

Mr. Fletcher said Wyndham Woods I believe, was built before a standard existed.

Mr. Chenault asked about the subdivision behind the motor mile on South Main Street.

Mr. Fletcher replied that Meadow Point received a variance from the Design and Construction Standards Manual.

Mr. Chenault asked about the one across from Stone Spring School.

Mr. Fletcher said this development had stub streets into neighboring properties which are within the City limits and zoned for R-1, single family development; therefore they were looked at favorably as not being a long cul-de-sac.

Mr. Chenault said in looking at these plats provided by Mr. Blackwell, there is one difference that I see is consistent on all the plats, and that is the City controls the adjacent land, for zoning and subdivision purposes where these stub streets would continue. In the case before us that is not the case; both extensions would go into the County, over some land that, I believe, is zoned A-2, and

the City has no control over what would happen there. I see a significant difference in the plats just discussed and the one we are reviewing tonight.

Mr. Baugh said we know what we have here; we know what staff's position is and what the applicant's position is. Often we find ourselves at this stage speculating over a legal issue, wondering what the City Attorney would say; here we do not need to speculate, we have the opinion of the City Attorney before us. What makes more sense to me is to show these photos/plats to the City Attorney and have this argument with him and not this body.

Chairman Burden said this is on the discussion as to whether or not the variance is needed in the first place.

Mr. Baugh replied the applicant is asking for preliminary plat approval only. The argument of the City Attorney is you cannot grant this preliminary plat without a variance. The applicant has not requested a variance, but I guess we could decide if they need the variance and give it to them.

Mr. Blackwell asked to speak again regarding the discussion of the land that this property abuts. It was mentioned in discussion that this adjoins A-2 property in the County and the City is not sure as to what may happen there in the future, nor do they have any say in it. There is a section of A-2 property, adjacent to this request, which was rezoned to residential. This site is in the County's comprehensive belt of development area. The remainder of Mr. Girdley's property in the County is zoned residential and that would bear to think that the land adjacent to Mr. Girdley's county land, which fronts along Pleasant Valley Road, would be favorably looked at for a residential use. The County has also run sewer through this area, so now there is public water and sewer nearby that A-2 property between Mr. Girdley's and Pleasant Valley Road.

Mr. Chenault asked if Mr. Girdley's county land was zoned R-3C.

Mr. Blackwell replied yes, for single family home lots.

Chairman Burden said I have been on the Planning Commission for five years and it does seem like we have "beat this thing to death." Although it could be argued that this development is not in an ideal location, the fact is, it is before us as a plan of development and we need to consider its merit as presented.

Mr. Finks said I was not aware of the rezoning in the County from A-2 to residential. I recommend that we approve this with the variance and the conditions by staff.

Chairman Burden said we have a motion to approve the preliminary plat with the variance to Section 10-2-41(a), even though the applicants did not request this variance, and with the two conditions suggested by staff. Is there a second on this motion?

Mr. Jones seconded the motion.

Chairman Burden asked if there was any further discussion. Hearing none, he called for a roll call vote on the motion.

Commissioner Chenault – yes.

Commissioner Finks – yes.

Vice Mayor Baugh – no.

Commissioner Da'Mes – no.

Commissioner Jones – yes.

Chairman Burden – yes.

Chairman Burden said this will move forward to City Council on December 8, 2009 with a favorable recommendation. (4-2)

Master Plan Amendment (Woodland Green House Homes)

Chairman Burden read the request and asked staff to comment.

Mrs. Banks said the Comprehensive Plan designates this area as Institutional. These lands are designated for development by certain nonprofit and public institutional uses such as colleges and universities, hospitals, offices of nonprofit organizations, community assembly uses and institutions which provide for the shelter and care of people.

The following land uses are located on and adjacent to the property:

Site: Woodland building and single-family homes, zoned R-3/I-1

North: Crestwood assisted living facility and Oak Lea nursing facility, zoned R-3/I-1

East: Across Virginia Avenue, undeveloped parcel, non-conforming dwellings and commercial properties, zoned B-2

South: Across Parkwood Drive, VA Mennonite Conference Center and undeveloped parcel, zoned B-2

West: Single-family dwellings, zoned R-3 and Eastern Mennonite University, zoned R-3/I-1

The Virginia Mennonite Retirement Community (VMRC) consists of three separate organizations; Park Village, Inc., Heritage Haven Inc, and Virginia Mennonite Home, Inc. Together these organizations own the more than 46 acres that make-up VMRC.

VMRC received their institutional overlay master plan approval in March 1997 and since that time have amended their plan twice. First, in June 2004 they added an additional 1.2 acres to the Park Village subsidiary and then recently in June 2009, they modified the allowable uses within the Woodland facility, which is part of the subsidiary, Virginia Mennonite Home, Inc.

The applicant is requesting to modify the allowable uses within the VMRC master plan. More specifically, the applicant desires to amend the 6.9 acres surrounding the Woodland Cottages and the Woodland facility. Currently, the Woodland facility has master plan approval as a child day care center, for student housing and for offices. The Woodland Cottages, also permitted, are detached, single-family, independent housing units. The proposed amendment would allow for long term nursing care facilities, called Green House Homes, to be constructed on the site while continuing to allow the already approved uses. The initial phase of construction would necessitate the demolition of the Woodland Cottages; but, would leave the current Woodland facility intact, allowing it to still be used temporarily as designated by the current master plan.

Green House Homes are described by the applicant as an innovational approach to skilled nursing. They differ from traditional institutional nursing homes in that they are designed as more of a residential home for up to ten occupants. Each home will have ten private rooms, each with a bathroom, and a central kitchen and dining area where residents and caregivers can work together in meal preparation and to share family-style meals with one another. The home will also contain areas for bathing, laundry, and a den for family visits. When completed, VMRC plans to have a total of ten Green House Homes, totaling 100 residents, where each home will have around-the-

clock caregivers. The Green House Homes are intended to be clustered, creating smaller, micro-communities around gardens, winding paths, and seating areas. The ten homes will also surround a larger central green space designed to protect the mature trees and forested areas currently located on the site.

When completed, the Green House Homes would be accessed by a loop road that has a single entrance from Oak Drive. The existing entrance to this area, from Parkwood Drive, would be phased out upon completion of the project. The loop road would be designed to provide vehicular circulation, as well as to be safe and functional for pedestrian traffic. Each home has a driveway that would accommodate one vehicle. Twenty additional parking spaces would be provided toward the center of the site for guest parking and deliveries. At present, there are about 52 parking spaces and when construction of the Green House Homes is completed there would be 20 spaces, plus the driveway spaces. The applicant has stated that daytime caregivers would park elsewhere on the VMRC campus, and generally, residents in this type of home do not have vehicles. VMRC would provide van and/or bus access to each home. Staff believes their parking arrangement is satisfactory.

The closing of the Woodland Drive entrance along Parkwood Drive will place more traffic entering and exiting the VMRC campus from the Oak Drive entrance along Virginia Avenue. Staff has discussed with the applicant that sight distance onto Virginia may become an issue and they may need to remove the trees/shrubs located along the north corner of the Oak Drive/Virginia Avenue intersection. Eastern Mennonite University (EMU) has been in contact with the City, and the applicant, regarding an access easement they have at the Woodland Drive/Parkwood Drive entrance. This easement allows EMU the right of entry, through the Woodland area, to their property along the western boundary of the site. The applicant is working with EMU on this matter.

Although not required, the Public Works Department has suggested that VMRC consider two items when developing the proposed master plan. The first is to remove and reconstruct the existing curb, gutter, and sidewalk along Virginia Avenue. Currently, along this section of Virginia Avenue there is mountable curb with sidewalk constructed to the back of curb; this is VDOT standard for a 45 mph speed limit such as this. It does not, however, presently meet City standards. The second item is the dedication of right-of-way along Parkwood Drive for future road improvements.

This is an innovative and unique approach to nursing home living. The concept of clustering homes, using sustainable building techniques, and the preservation of open space is encouraged in development and is consistent within some of the sustainability concepts with the Comprehensive Plan. This development could spark interest and encourage others to utilize sustainable construction methods. Staff supports the request for amendment to this portion of the VMRC master plan.

Chairman Burden asked if there were any questions for staff.

Mr. Da'Mes asked what would be an acceptable sight distance coming off of Oak Drive. Is there a guide line as to what sight distance is?

Mr. Fletcher said the City standard for sight distance is determined by the speed of the street, multiplied by 10. If the street is 45 mph, then you would be required 450 feet of sight distance as measured at the point behind the stop bar at a stop sign. It is engineered in both directions; therefore, you would need to see 450 feet both ways. There has not been someone at the site

measuring sight distance, but the applicants can make the adjustment at this time if they feel it necessary.

Mr. Chenault said I come out of that road all the time and I can tell you that I do not have any issues at all with the sight distance. Probably the bigger issue is vehicles travelling on Virginia Avenue at 90 mph; but the sight distance seems to be adequate.

Mr. Fletcher said it would be looked at during the site plan review.

Chairman Burden asked if there were any further questions. Hearing none, he opened the public hearing and asked the applicant or applicant's representative to speak.

Mr. Chris Garber with the Troyer Group said they are the designers of this Master Plan and the Green Houses that would be placed on this site. The loop road through this project is designed such that emergency vehicles will be able to access the site and will be able to access each individual home. Also, with the loop road and the elimination of cross traffic through the site, it increases the safety for the residents and staff members on site. Additionally, we would maintain as many of the existing trees on site as possible. This is a particular concern of the owner and something that the Troyer Group feels very strongly about. As you can see, with the community park in the center, we would allow for even more green space for the community interaction between the residents on campus as well as those who may visit from other areas of campus. The Green House is a very new concept. It is a resident centered care approach to long term care, as opposed to some of the more institutional or traditional models that are out there. These homes are centered around a community space within the home itself; it is called the hearth. These homes bring aspects that you would have in your own home, so that these elders feel that these are their homes. The development itself would be a benefit to VMRC, to the elders that live there, and to the Harrisonburg community at large.

Chairman Burden asked if there were any questions for Mr. Garber. Hearing none, he asked if there was anyone else wishing to speak for the applicant.

Ms. Sylvia Moore, a resident of Park Gables at VMRC, said she is heartily in favor of the Green House Concept. It is a very innovative model for long term nursing care. This changes the stereo-typical concept of nursing home care, where no one wants to go, into a very positive and inviting environment of a cozy, attractive, home life setting. Each elder has a private room and bath, furnished with their own cherished belongings. The rooms surround a common area featuring a fireplace and hearth where elders are encouraged to spend their days in social interaction with one another. It has been noted in all the Green House communities that have been established that very strong, loving relationships are forged between the elders and their caregivers. Families tend to visit the Green House homes more frequently because they find the Green House homes inviting, with a sunroom or den area where they can visit with loved ones. Although I do not relish the idea of long term care in any facility, should it become necessary down the road for me, the Green House model is definitely one that I would prefer.

Mr. Ron Yoder, President of VMRC, said he does not have much to add to what has already been said tonight. The use of the site has been very consistent since July 1954 when VMRC first opened the doors of the Woodland building and began to offer assistant living and nursing care; that will continue to be the case with the Green House Homes. Some of the expressions I frequently hear from families when they leave their family member in an institutional nursing care environment is lament, dread and guilt; so the Green House Home is an attempt to address the concerns, not only of

the elder, but the family members too. In discussions with VMRC nurses, I have come to learn that they believe the institutional environment restricts their ability to provide consistent quality of care and they see the Green House as a source of empowerment to enable them to have a greater positive impact on the quality of care of elders. I believe there is a lot of evidence here tonight for you to favorably approve this request for amendment.

Mr. Marvin Nisley, member of staff with VMRC, said he had two comments. One is that we have met with the folks at EMU about access to their property and we are committed to working out a satisfactory solution for all parties involved. Secondly, if this goes forward as we hope, VMRC would be the first in Virginia to put Green House Homes in to place; and we hope we are the ones to do that. Also, I just wanted to say that the City staff has been very helpful in working with us on this amendment.

Chairman Burden asked if there was anyone else in favor of the amendment wanting to speak. Hearing none, he asked if there was anyone opposed to the amendment wanting to speak. Hearing none, he closed the public hearing and asked for discussion.

Mr. De'Mas moved to approve the amendment to the master plan as requested.

Mr. Jones seconded the motion.

Chairman Burden called for a voice vote on the motion.

All voted in favor of the motion to approve.

Chairman Burden said the motion is approved (6-0) and this will move forward to City Council with a favorable recommendation on December 8, 2009.

Zoning Ordinance Amendment – Commercial Parking in R-3 by SUP

Chairman Burden read the request and asked staff to comment.

Mr. Fletcher said an applicant is requesting to amend the Zoning Ordinance to give R-3 property owners the possibility of renting parking spaces as an allowable commercial operation by special use permit. This amendment would modify both R-3 districts—Multiple Dwelling Residential District and Medium Density Residential District—by adding the use within Sections 10-3-46 and 10-3-48.4 respectively. This application is an attempt to rectify a zoning violation and to continue a use that is now illegal.

On the morning of Monday, August 17th, staff observed a sign promoting an illegal use on an R-3 zoned parcel. This property happened to be located across Warren Street from the Planning and Community Development Department office. The operator of "Freshman Parking," a private business that provides an opportunity for people to rent parking spaces to store their vehicles for a prescribed period of time, was operating their business on the existing parking facility adjacent to the Lindsey Funeral Home. On that day, staff contacted the representative of the business to notify them of their zoning violation. The representative explained he had visited the office the week before regarding a sign question, which led him to erecting the sign and establishing the "Freshman Parking" business on the property. Unfortunately, in discussing with staff whether face plates of an existing sign could be changed, the establishment of a new business was not discussed. Changing a faceplate on an existing sign is allowed without a sign permit provided the use of the property continues to be a permitted use. In this case the existing sign ended up being removed from the site and a new one was installed advertising the illegal use. The applicant should be aware that if they are successful in amending the Zoning Ordinance and then they receive approval for a special use

permit, they must apply for a sign permit for the new sign so they are in conformance with the sign regulations.

After several correspondences with the business operator, staff sent a zoning violation notification to him and the property owner, which was received on August 22nd. The business representative understood he had 30 days to rectify this violation by: putting an end to the use on the property, appealing the Zoning Administrator's decision, amending the Zoning Ordinance to permit such a use, or rezoning the property. The business operator ultimately decided to apply to amend the Zoning Ordinance and submitted an application on September 18th, within his 30 day violation rectification period, and the application was placed on the November Planning Commission agenda. It is department practice to allow a violation to continue operating as long as the property owner is actively pursuing an amendment to the Zoning Ordinance that would lead to compliance.

The applicant's representative worked with staff to establish language that would allow him to apply for a special use permit, and then if approved, he could continue his use. The proposed language is as follows: *Rental of existing parking unit, lot, and/or spaces(s) not required for meeting off-street parking requirements for an existing use and where the parcel is adjacent to property zoned B-1, B-2, or M-1. The parking facility shall be an all-weather surface.* In other words, if a parking lot already exists on a piece of R-3 zoned land and the property is adjacent to, meaning sharing a property boundary or located across the street from, commercially or industrially zoned property, the property owner could apply for a special use permit application to rent parking spaces, if those spaces are not needed to meet a requirement for an existing use. Based upon the proposed language, a property owner could not purposely build a parking lot and then apply for the special use permit, or vice versa.

Staff has several concerns with the proposed amendment. Although the proposal has the benefit of opening a revenue stream for property owners with vacant R-3 buildings and parking lots, it could make these owners less inclined to transition their parcel into permitted uses if they can simply make money by renting parking spaces. Promoting the use of R-3 land for parking purposes is not conducive to the primary residential nature of the R-3 zoning classification. There is also a possibility that R-3 property owners may begin constructing more parking areas than necessary, leading to more paved surfaces, which again is another dissonant use for R-3 areas. Although the use would require a special use permit, allowing these uses could lead to less or reduced usage of the transit system in the future. Allowing sporadic parking lots would encourage more students to bring their vehicles to the City, and result in more congestion on our streets. In addition to these land use concerns, staff has not received any input, other than from the applicant's representative, that this use is overwhelmingly desired and necessary for the City. Furthermore, this use is already permitted within the B-1, B-2, and M-1 zoning districts. Staff does not believe there is enough justification to amend the Zoning Ordinance to allow such a use in the R-3 zoning district.

Staff recommends denial of this application.

Chairman Burden asked if there were any questions for staff. Hearing none, he opened the public hearing and asked if the applicant or applicant's representative would like to speak in favor of the amendment.

Mr. Tim Peters said he is the agent for Dr. William Lindsay, the applicant for this ordinance amendment. I am with Cottonwood Commercial Realty and I do, as well, own Freshman Parking; therefore, I am Dr. Lindsay's tenant as well. The way this came into being is that when Dr. Lindsay removed the building at 435 South Main Street, which had deteriorated past the point of being

usable as an office building, he came to me and told me he would like to rent that parking lot. Of course I agreed to rent it from him, without first checking to see that it was zoned R-3 and not an allowable use.

My conversations with staff have been very helpful to focus our request as narrowly as we could. Our goal is not for parking lots to be built on R-3 land, spreading lots of pavement and students throughout the City. This is just as an intermediate use and only by special use permit. This would allow for Dr. Lindsay to make some use of the lot, which is already an existing parking lot, in the intermediate time before he redevelops that land. The idea that property zoned R-3 would be best used for parking is clearly not the case; it is not that lucrative. These 14 parking spaces are bringing in less than $3,000 per year in rental. The idea that someone would not want to transition into an R-3 use that would give them much more profit, is not going to happen. R-3 land is way too valuable. The amendment is very specific and there are not many vacant or demolished R-3 buildings in the City where the parking lot could be used in this manner. I do not expect that you will receive ten requests for special uses for this type of use. The specific nature of this language really restricts it to being adjacent to a business zoned property, which is a big point that we were trying to get across. The main nature of R-3 is residential, but there is a commercial component.

Chairman Burden asked if there were any questions for Mr. Peters.

Mr. Da'Mes asked if there was a term on how long the lease between Dr. Lindsay and Freshman Parking was for.

Mr. Peters replied right now it is just by semester.

Mr. Da'Mes asked if there was an expectation to develop that land to make it more lucrative.

Mr. Peters said Dr. Lindsay also owns the adjacent property which is leased to Lindsay Funeral Home. I believe he has a long term plan for the parcels. Setting aside Freshman Parking, Dr. Lindsay could not even lease that empty parking lot to Lindsay Funeral Home because of the R-3 zoning. Planning Commission could approve this amendment and then deny a special use permit request for Freshman Parking on that site. Right now, this parking lot cannot be leased to anyone to use.

Chairman Burden asked if there were any other questions for Mr. Peters. Hearing none, he asked if there was anyone wishing to speak in favor of the request. Hearing none, he asked if there was anyone wishing to speak in opposition to the request. Hearing none, he closed the public hearing and asked Planning Commission for discussion.

Mr. Da'Mes said twenty percent of the City's land is zoned R-3, that is a significant amount.

Mr. Chenault said he appreciates what Mr. Peters had to say. Staff's analysis is excellent and I agree with it. I did speak with some of the surrounding businesses to this and they were inclined to not be supportive of this as well. With that being said, I make a motion to deny the amendment.

Chairman Burden said there has been a motion made to deny the amendment. Are there any further questions?

Mr. Fletcher reminded everyone that this is the ordinance amendment to allow the use. The applicant would have to come back and apply for the special use permit separately.

Mr. Da'Mes asked how do you regulate open parking spaces from being used by visitors to downtown Harrisonburg.

Mr. Peters replied I have parking stickers that are placed on the rear windshield which designates who is allowed to park in the lot. The parking lots are then monitored.

Chairman Burden said we have a motion to deny the ordinance amendment; is there a second.

Mr. Finks seconded the motion.

Mr. Da'Mes asked if there was any way to narrow this to make it more acceptable or is it the whole premise.

Mr. Chenault replied for me it is the whole premise.

Mr. Baugh agreed.

Chairman Burden said I am untroubled by this amendment because we are talking about a use that would be allowed by special use permit. This would allow us to determine if the use should be allowed in a specific area. He then asked if there were any further comments or questions. Hearing none, he called for a roll call vote on the motion to deny, reminding everyone that a vote in the "yes" is a vote to deny the amendment.

Commissioner Chenault – yes.

Commissioner Finks – yes.

Vice Mayor Baugh – yes.

Commissioner Da'Mes – yes.

Commissioner Jones – yes.

Chairman Burden – no.

Chairman Burden said this ordinance amendment will move forward to City Council on December 8th with an unfavorable recommendation. (5-1)

Unfinished Business

None.

Public Input

None.

Report of secretary and committees

Mrs. Banks said proactive zoning was not done this month and we hope to pick it back up in November.

Mr. Baugh said at the City Council meeting on Tuesday night the subdivision ordinance amendment was unanimously approved. The major family day home on Eastover Drive was approved by a 3-2 vote. What was unfortunate about that request was that, despite our encouragement of the parties to get together and talk, they absolutely did not get together.

Other Matters

Mr. Fletcher reminded the Commission that next Tuesday, November 17th, we are having a Comprehensive Plan work session for chapters 10 and 12. Do any of you have specific questions for specific departments? I need to let individual departments know who needs to be at the work session.

There was a general agreement among the Planning Commissioners that it was not necessary to have any departments at the work session to answer questions.

Mr. Fletcher said we have no new items to review at the December Planning Commission; however, we still have to meet. I suggest that we do the work session for chapter 11 that night.

Mr. Da'Mes asked how many more chapters after that?

Mr. Fletcher said there are not many left to pre-review, as the other chapters are ones that build off of public comment. I would say there would probably be one more work session for chapter 13. Chapter 11 will be reviewed on December 9th, after our regular meeting.

Adjournment

The meeting was adjourned at 8:50 p.m.

Chairman Jared Burden

Secretary, Alison Banks